

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re: Recalled Abbott Infant Formula
Products Liability Litigation

Case No. 22 C 4148
MDL No. 3037

THIS DOCUMENT RELATES TO:
ALL CASES

Hon. Judge Matthew F. Kennelly

CHARLOTTE WILLOUGHBY,
LAKENDREA CAMILLE MCNEALY,
SHAYLYNN DOXIE, BRITTNEY GRAY,
KATLEENA HELMICK, LANI
HOLIDAY, ASHLEY POPA, and
DENIEGE REVORD individually and on
behalf of a class of similarly situated
individuals,

Case No. 22 C 1322

Plaintiffs,

Hon. Judge Matthew F. Kennelly

V.

ABBOTT LABORATORIES,

Defendant.

In Re: Recalled Abbott Infant Formula
Products Liability Litigation

Case No. 23 C 338

Hon. Judge Matthew F. Kennelly

**JOINT STATUS REPORT
FOR THE APRIL 21, 2023 CASE MANAGEMENT CONFERENCE**

Per the Court's Order, MDL ECF 90 (Case No. 1:22-cv-4148), the parties are providing the following report regarding the status of the MDL and *Willoughby* matter.

I. STATUS OF FILED MDL CASES

The parties are presently aware of 67 cases pending in the Northern District of Illinois pertaining to Abbott's recalled infant formula. This includes 50 cases alleging personal injury following consumption of Abbott recalled products and 17 class action complaints alleging economic loss (pending the formal dismissal of certain actions described below, *see also* MDL ECF 102).

The parties believe all related cases have been associated with the MDL with the exception of the following, which the parties request be so associated:

- 1:22-cv-05494 *Kilpatrick v. Abbott Laboratories Inc.*¹
- 1:23-cv-00252 *Emert v. Abbott Laboratories Inc.*
- 1:23-cv-01855 *Ortiz v. Abbott Laboratories Inc.*

II. STATUS OF DISCOVERY

MDL.

Joint Statement of the Parties: The MDL parties continue to make progress in responding to each side's respective discovery requests. To date, Abbott has made six productions, totaling over 75,000 documents (over 240,000 pages), including FDA audit materials, environmental and product test records, and organizational charts. The MDL parties are engaged in regular, productive meet and confers over what search terms are to be applied to Abbott's custodial productions. Likewise, the MDL parties have met and conferred in an effort to narrow remaining disputes relating to class representative discovery responses. Finally, the MDL parties are engaged

¹ The *Kilpatrick* case appears on the Court's docket as a "related" case, but not as "associated" with the MDL.

in the process set forth in CMO 3 relating to personal injury plaintiffs' Fact Sheets and Authorizations.

Willoughby.

Plaintiffs' Statement: Plaintiffs served requests for the production of documents on September 29, 2022. Abbott has refused to respond to those requests or engage in a Rule 26 conference. Abbott indicated that it intended to seek a stay of discovery pending a decision on the motion to dismiss, but never did. Conferrals on this Joint Status Report is the first notice provided to the *Willoughby* Plaintiffs that any discovery or meet and confers have been on-going in any of the cases. Plaintiffs provided a draft protective order to Abbott and are prepared to provide an ESI protocol within two weeks. Plaintiffs request that the Court order the parties to schedule a Rule 26 conference within two weeks.

Abbott's Statement: The *Willoughby* Plaintiffs' description of the *Willoughby* discovery history is inaccurate.

On September 29, 2022, while the case was still pending before Judge Maldonado, the *Willoughby* Plaintiffs served 31 document requests that overlapped extensively with the document requests served in the MDL.

Abbott responded to the *Willoughby* Plaintiffs on October 11, 2022. Abbott noted that no Rule 26(f) conference had yet occurred, and that "the Requests [were therefore] premature" and void. *See* Fed. R. Civ. P. 26(d). Separately, Abbott took the position that "any discovery [was] premature while Abbott's Motion to Dismiss [was] pending," especially given the "threshold" issues of standing, primary jurisdiction, and severance/consolidation that Abbott had raised in its motion before Judge Maldonado.

The parties subsequently met and conferred on several occasions about how to handle discovery in *Willoughby* while Abbott's Motion to Dismiss or Sever was pending, without reaching any resolution. Abbott thereafter moved for the *Willoughby* case to be transferred to this Court's docket alongside the MDL in December 2022, 22-1322 ECF 43, which this Court granted in January 2023, 22-1322 ECF 47.

From the time Abbott moved for transfer last December, up to the preparation of the present Joint Statement, the *Willoughby* Plaintiffs never raised discovery issues with Abbott at all (other than a single email about a proposed confidentiality order in February 2023, to which Abbott promptly responded with its comments). Abbott had therefore assumed that the *Willoughby* Plaintiffs were actively collaborating with the MDL Plaintiffs on discovery or waiting until the pending motion to dismiss the *Willoughby* action was resolved. Apparently that assumption was incorrect.

If the *Willoughby* Plaintiffs now wish to press forward with their case, rather than awaiting the outcome of the Motions to Dismiss, Abbott submits that they should be required to coordinate with the MDL Plaintiffs; obtain and review the MDL discovery; determine what (if anything) they reasonably require that is not already encompassed within the MDL discovery record; and then proceed to serve tailored, non-duplicative requests for that unique information. Until the *Willoughby* Plaintiffs have taken these threshold steps to avoid duplication and overlap, Abbott submits that any further discovery proceedings in *Willoughby* are unwarranted.

III. PENDING MOTIONS AND STIPULATIONS

Motions to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) & 12(b)(6). There are currently three pending motions to dismiss brought by Abbott pursuant to Federal Rules 12(b)(1) and 12(b)(6):

- i. Motion to Dismiss MDL Personal Injury Complaints [Motion at MDL ECF 63 & 63-1, Opposition at MDL ECF 87, and Reply at MDL ECF 96]
- ii. Motion to Dismiss MDL Amended Consolidated Class Action Complaint [Motion at MDL ECF 94 & 94-1, Opposition at MDL ECF 97, and Reply due to be filed on April 19, 2023]
- iii. Motion to Dismiss the *Willoughby* action [Motion at 23-338 ECF 21-23, Opposition at 23-338 ECF 24, and Reply at 23-338 ECF 28].

These motions are scheduled for oral argument on May 1, 2023, with the hearing on the class action/economic loss complaints and the *Willoughby* complaint scheduled for 9:30 a.m. and the hearing on the personal injury complaints scheduled for 11:00 a.m. MDL ECF 106, 107. At the upcoming status conference, the parties would appreciate guidance from the Court as to the format, organization, and/or time limitations for the argument as well as on any specific issues the Court would like addressed (including as it relates to the potential overlap between issues raised in the motions regarding the *Willoughby* matter and MDL Class Action Plaintiffs).

Additionally, with specific regard to the *Willoughby* matter, at the February 1 Status Conference, the Court stated that it would be willing to entertain supplemental submissions regarding regulatory developments that postdate the close of briefing on the *Willoughby* Motion to Dismiss. Because the FDA has taken further actions and courts have issued relevant decisions, Abbott believes that such supplementation would be helpful. Accordingly, Abbott requests that the Court grant leave to both Abbott and the *Willoughby* Plaintiffs to file supplemental submissions of five pages or fewer, limited in scope to the FDA/primary jurisdiction issues. Abbott proposes that both parties' briefs (if they choose to file one) be due on or before Friday, April 21, 2023. Abbott believes that further responses or replies are not necessary.

Motion to Dismiss Non-Responsive MDL Plaintiffs. On March 29, 2023, Abbott filed a motion to dismiss as to six economic-loss MDL Plaintiffs who have not responded to discovery and who are not included in the Amended Consolidated Class Action Complaint. MDL ECF 99,

100. Per the Court's Order, MDL ECF 103, any response is to be filed by April 18, 2023, and any reply is to be filed on April 25, 2023.

Second Amended Joint Stipulation Regarding Certain MDL Plaintiffs. On April 3, 2023, the MDL parties filed a Second Amended Joint Stipulation Regarding Voluntary Dismissal of Certain Class Action Plaintiffs and Claims. MDL ECF 102. On April 4, 2023, the Court directed the parties to prepare and submit a proposed order as to the stipulation, including to identify whether any particular cases could be closed on account of the stipulation. MDL ECF 104. On April 10, 2023, the parties submitted a proposed order, which, among other things, identified four actions that the parties believe can be closed on account of the stipulation.

IV. OTHER MATTERS

Andaluz Action. On February 23, 2023, the MDL parties filed a Joint Stipulation Regarding Voluntary Dismissal of the *Andaluz* Action to address jurisdictional issues related to that action, which was originally filed in the United States District Court for the Central District of California. MDL ECF 92. The parties are awaiting a corresponding order dismissing that action (currently pending as Case No. 1:22-cv-04157) without prejudice in the Central District of California, so that the Plaintiffs in the *Andaluz* Action may re-file in this Court.

Dated: April 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system and/or by e-mail.

By: /s/ Michael A. Glick
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